

CENTRAL INTELLIGENCE AGENCY
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25 September 1973

Capt. L. E. Hopkins, SC, USN
Chairman, ASPR Committee
Office of the Assistant Secretary of Defense
Washington, D. C. 20301

Dear Capt. Hopkins:

Thank you for inviting our comments on the proposed legislation to revise government procurement law. Two bills were forwarded -- H.R. 9061 and the ASPR bill of 3 August 1973.

We have no difficulty with the bills to the extent that they modify, simplify and improve procurement law. Our primary concern is to be certain that the authority of the Agency to undertake activities necessary to its functions not be impaired by enactment of the new legislation. For that purpose we request the addition of a sentence, which logically might become the very last sentence in either bill, similar to that now contained in 40 U.S.C. 474(17), substantially as follows: "Nothing in this Act except the repeal of section 3 of the Central Intelligence Agency Act of 1949 shall impair or affect any authority of the Central Intelligence Agency."

Section 20 of the ASPR bill contains highly desirable authority permitting the President to authorize the making or amending of contracts without regard to "other laws" relating to the making of contracts. Since this bill would repeal most, if not all, other laws relating to contracts, retention of the word "other" in this context would seem to negate the purpose of section 20, that is, it would permit the President to authorize procurement without regard to nonexistent laws relating to contracting. The intent of section 20 surely is that the President be authorized to provide for contracting

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without regard to any law, including this bill. We would suggest the term become "this or any other laws".

We would also suggest section 20 be recommended for inclusion in H.R. 9061 if that bill goes forward.

There may be some conflict or confusion in sections 6, 7, 8, and 9. Section 6 is permissive -- small purchase contracts "may be" negotiated under that section. Under section 7, contracts not negotiated under section 6 "shall be" by formal advertising. Under section 9 contracts "may be" made by non-competitive negotiation, and thus conflicts with section 7. Section 8 provides that contracts may be by competitive negotiation except "as provided by sections 6, 7, and 9", which also appears to conflict with section 7. A solution would be as follows:

(a) revise section 7 to read "Contracts not negotiated under the provisions of sections 6, 8, and 9" etc., and

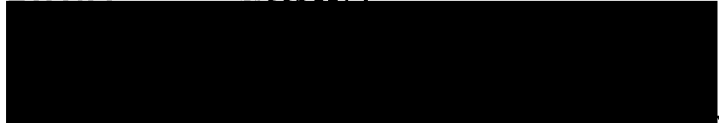
(b) revise section 8(a) by deleting the reference to sections 6, 7, and 9.

Thus, sections 6, 8, and 9 would be in permissive terms and all other contracting would be mandatory under section 7.

We note also that in section 5 the subsections should be designated by letters, rather than numbers. Also, the phrase "as provided by sections 6, 7, 8, and 9" should be set out as a part of section 5, but not part of subsection (4).

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Sincerely,


John S. Warner
Acting General Counsel

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